

## REMARKS

Applicant respectfully requests consideration of the subject application. This Response is submitted in response to the Office Action mailed April 6, 2009. Claims 34-56 are pending. Claims 34-56 are rejected. In this Amendment, claims 34 and 56 have been amended. No new matter has been added.

### 35 U.S.C. §102 Rejections

The Examiner has rejected claims 34-36, 38 and 41-44 under 35 U.S.C. § 102(b) as being anticipated by *Brazell*, II, (U.S Patent No.: 4,759,412, hereinafter “*Brazell*”).

Applicant respectfully submits that *Brazell* is no more relevant than the previously cited documents (*Lange*, *Minotti et al.* and *MacOnochie*) all of which are Weight-and-Anvil type arrangements.

Applicant notes the Examiner’s interpretation that *Brazell* discloses “..a hammer assembly. Including a housing (80) and a substantially elongated hammer (82).....capable of extending through the lower opening of the housing as shown in figure 1.”

However Applicant respectfully submits this analysis is incorrect. Contrary to denoting a ‘housing’ according to the meaning of the present invention, the *Brazell* reference numeral (80) in fact denotes a ‘guide tube’ (c.f col 3, lines 30, 56 and 65). Functionally, as well as descriptively, the guide tube (80) is **not** an equivalent to the hammer housing of the present invention. The guide tube (80) is in fact described (col 3, lines 28-31) as providing the location for tie rods (56) which “*together with plate (54) and anvil (46), effectively form an isolated cage structure therein.*” It can be seen the

guide tube (80) may be considered to be a *component* in the housing but cannot be interpreted as being a collective term for the *whole* housing.

When compared with the present application, it can be readily seen that throughout the Applicant's specification, the use of the term *housing* is as a collective term denoting the entire structure in which "the hammer is received" and including a hammer with a tool which is capable of "extending *through* a lower opening end in the housing to strike the working surface...." The housing of the present claimed invention thus clearly requires a housing to be something which the tool can protrude *from* to strike a working surface.

This contrast is further re-enforced by examination of the *Brazell* passage describing the protrusion of the tool (22) from the breaking device (10), i.e. col 2, lines 63 – col 3, line 14. The tool (22) is described as protruding from the ***housing*** (24). Axiomatically, the terminology used is far more relevant to the 'housing' in the present application than the 'guide tube (80) both descriptively and functionally. Moreover, the *Brazell* housing (24) is specifically configured to restrict the downward movement of the hammer (82) (col 4, lines 44-49):

*"As the hammer impacts the chisel, the chisel is driven downwardly into the surface to be broken, the downward stroke of the hammer being limited by its potential engagement with the anvil 46, and the engagement of the collar 28 around the chisel with the ledge or abutment 26 in chisel housing 24."*

The *Brazell* hammer (82) is thus incapable of protruding from the housing (24) and cannot therefore be an anticipation of the present invention.

Turning to the Examiner's interpretation that the *Brazell* hammer (82) could be interpreted to extend from a housing (actually guide tube (80)) and may be reversible, it

is clear there would not normally be a need to reverse the *Brazell* hammer as most of the wear would occur on the *Brazell* tool (22) head.

The *Brazell* hammer is not capable of striking a “*working surface*” within the context of the present specification, i.e. a “*working surface*” is a surface to be broken or impacted and is not part of the hammer apparatus. The *Brazell* hammer is clearly not designed to break a “*working surface*” as the only ‘surface’ that the *Brazell* hammer impacts is the chisel which is an integral working part of the hammer assembly. As with all weight-and-anvil type drop hammers, the striking tool, i.e. *Brazell*’s chisel, is not reciprocated by the drive mechanism (which reciprocates the hammer) and therefore cannot be considered to be part of a “hammer” within the context of the present application.

Applicant therefore submits that the present claimed invention is not anticipated by *Brazell*.

However, in order to ensure there is no possible ambiguity over the intended meaning of the term “*working surface*” in the present application, the applicant has amended the claims to specify the working surface is “an *external* working surface” and therefore not part of the hammer assembly.

As all the subsequent claims 35-55 are dependent on claim 34, Applicant therefore submits these are similarly novel and should be allowed to proceed to allowance. Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 34-36, 38 and 41-44 under 35 U.S.C. § 102(b) as being anticipated by *Brazell*.

The Examiner has rejected claim 56 under 35 U.S.C. § 102(b) as being anticipated by *Kikel*, (U.S Patent No.: 4,848,197, hereinafter “*Kikel*”).

*Kikel* describes a hand tool with a Phillips head and a flat head that can be swapped around. As will be generally understood, such heads are for rotational movement. There is no suggestion in *Kikel* that the tool can also have reciprocating movement. In fact, *Kikel* describes in column 2, line 4 a friction fit and it will be commonly understood that the bit is inserted against a stationary seat. For these reasons, *Kikel* also does not suggest that reciprocating movement can be provided by the hand tool.

Claim 56 specifically includes the limitation that a drive mechanism is provided for reciprocating the hammer. Claim 56 thus includes a limitation that is not suggested by *Kikel*. Applicant therefore submits that claim 56 is novel over *Kikel* and respectfully requests withdrawal of the rejection of claim 56 under 35 U.S.C. § 102(b) as being anticipated by *Kikel*.

#### 35 U.S.C. § 103 Rejections

The Examiner has rejected claims 37, 45 and 48-52 under 35 U.S.C. § 103(a) as being unpatentable over *Brazell* in view of *Sicotte*, (U.S Patent No.: 3,205,952, hereinafter “*Sicotte*”). These claims depend from claim 34 and should be allowable for the same reasons as claim 34.

The Examiner has rejected claims 39, 40 and 47 under 35 U.S.C. § 103(a) as being unpatentable over *Brazell* in view of *Robson*, (U.S Patent No.: 5,363,835, hereinafter “*Robson*”). These claims depend from claim 34 and should be allowable for the same reasons as claim 34.

The Examiner has rejected claims 53-55 under 35 U.S.C. § 103(a) as being unpatentable over *Brazell* in view of *Sciotte* as applied to claim 48 and further in view of *Robson*. These claims depend from claim 34 and should be allowable for the same reasons as claim 34.

Applicant, accordingly, respectfully requests withdrawal of all the rejections under 35 U.S.C. § 103.

Applicant respectfully submits that the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call the undersigned attorney at (650) 798-0300.

Please charge any shortages and credit any overages to Deposit Account No. 19-3140. Any necessary extension of time for response not already requested is hereby requested. Please charge any corresponding fee to Deposit Account No. 19-3140.

Respectfully submitted,  
SONNENSCHN NATH & ROSENTHAL LLP

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/Stephen M. De Klerk/

Stephen M. De Klerk  
Reg. No. 46,503

P.O. Box 061080  
Wacker Drive Station, Willis Tower  
Chicago, Illinois 60606-1080  
650-798-0300